

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CROSSROADS SYSTEMS, INC., §
§
Plaintiff, § CIVIL ACTION NO. 1:10-CV-652-SS
v. §
§ JURY DEMANDED
(1) 3PAR, INC., §
(2) AMERICAN MEGATRENDS, INC., §
(3) RORKE DATA, INC., §
(4) D-LINK SYSTEMS, INC., §
(5) CHELSIO COMMUNICATIONS, INC., §
 (a Delaware Corporation), §
(6) DATACORE SOFTWARE §
 CORPORATION, §
(7) ISTOR NETWORKS, INC., and §
(8) CHELSIO COMMUNICATIONS, INC., §
 (a California Corporation), §
§
Defendants. §

CONCISE NON-INFRINGEMENT STATEMENT OF ISTOR AND D-LINK

I. DIRECT INFRINGEMENT

Defendants iStor and D-Link assert that they do not directly infringe the ‘035 Patent for one or more of the following reasons.

A. THE ACCUSED ISTOR AND D-LINK DEVICES DO NOT MEET THE “FIRST TRANSPORT MEDIUM” LIMITATION

Every claim of the ‘035 Patent requires communication using a *first transport medium*.

In accordance with the specification and the file history of the ‘035 Patent, *first transport medium* should be construed to be limited to Fibre Channel.¹ Because the accused iStor and D-Link devices do not use Fibre Channel, they do not infringe any claim of the ‘035 Patent.

¹ A complete claim construction analysis, including citations to intrinsic and extrinsic evidence, will be provided in iStor’s and D-Link’s claim construction briefing.

B. THE ACCUSED iSTOR AND D-LINK DEVICES DO NOT MEET THE “NATIVE LOW LEVEL BLOCK PROTOCOL” LIMITATION

Every claim of the ‘035 Patent requires allowing access to remote storage devices using *native low level block protocols*. In accordance with the ordinary meaning of the claim language, and the specification and file history of the ‘035 Patent, a *native low level block protocol* should be construed to mean a low level block protocol that is designed to communicate with the specific storage device that is being accessed.² Thus, for example, a *native low level block protocol* for a SATA hard disk drive is the SATA protocol because the SATA protocol is designed to communicate with SATA hard disk drives.

The iStor and D-Link devices use the iSCSI protocol to communicate with remote iStor and D-Link devices. However, iSCSI is not the native protocol of the remote storage devices in the remote iStor and D-Link devices. The remote storage devices in the iStor and D-Link devices are either SATA and/or SAS hard disk drives. The native protocols of these remote storage devices are the SATA and/or SAS protocols. Accordingly, the iStor and D-Link devices do not meet the *native low level block protocol* limitation, and, thus, they do not infringe any of the claims of the ‘035 Patent.

II. INDIRECT INFRINGEMENT

iStor and D-Link assert that they do not indirectly infringe the ‘035 Patent for one or more of the following reasons: (1) for at least the reasons set forth above, nobody directly infringes the ‘035 Patent using the iStor and D-Link devices; (2) neither iStor nor D-Link instructs anyone to perform actions that infringe the ‘035 Patent; (3) any components sold by iStor and/or D-Link are suitable for substantial non-infringing uses, and are not especially

² A complete claim construction analysis, including citations to intrinsic and extrinsic evidence, will be provided in iStor’s and D-Link’s claim construction briefing.

adapted for infringement of the ‘035 Patent; and (4) iStor and D-Link have never had the knowledge necessary to be liable for indirect infringement.

III. RESERVATION OF RIGHT TO SUPPLEMENT

This is a preliminary statement for the following reasons: (1) Crossroads has not identified its infringement positions with respect to each of the accused iStor and D-Link devices; (2) discovery, iStor’s and D-Link’s investigation of the ‘035 Patent and its file history, and comparison of the claims with the accused iStor and D-Link devices, are ongoing; and (3) claim construction has not begun. Accordingly, iStor and D-Link reserve the right to supplement and/or amend their positions based upon additional information that they obtain.

Respectfully submitted,

Dated: January 11, 2010

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of January, 2011, I electronically filed the foregoing CONCISE NON-INFRINGEMENT STATEMENT OF iSTOR AND D-LINK with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record, including the following:

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